



DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY

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QUANTICO, VA 22134-2253

MAR 4 2020

The Honorable Gregorio K. C. Sablan
U.S. House of Representatives
Washington, DC 20515

Dear Representative Sablan:

This is in response to your inquiry of January 14, 2020, expressing concern on behalf of your constituents about the Department of Defense Consolidated Adjudications Facility (DoD CAF)'s requests for documentation of United States citizenship in addition to a United States passport. The DoD CAF's decision to request this documentation was based on careful consideration of the United States Citizenship and Immigration Services' (USCIS) policy regarding individuals born in the Commonwealth of the Northern Mariana Islands (CNMI).

Generally, the DoD CAF may only grant a security clearance to an individual who is a United States citizen (References (a) and (b)). The DoD CAF follows USCIS policy and guidance in terms of who is considered a citizen of the United States rather than that of the U.S. Department of State. The USCIS Policy Manual (Reference (c)) is clear that those individuals born in the CNMI on or after November 4, 1986, are United States citizens. For those born prior to that date, a footnote in the USCIS Policy Manual notes that the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Reference (d)) describes other appropriate methods of obtaining United States citizenship. While this footnote also mentions "the Department of State will issue U.S. passports to persons born in the Northern Mariana Islands between January 9, 1978 and November 3, 1986," pursuant to *Sabangan v. Powell*, 375 F.3d 818 (9th Cir. 2004), USCIS was silent in its Policy Manual as to whether it also adheres to *Sabangan* in determining United States citizenship. However, USCIS did not use January 9, 1978, the date selected in *Sabangan*, as the demarcation date for United States citizenship by birth in the main body of its Policy Manual; it used November 4, 1986, as the date.

Faced with this apparent discrepancy in dates used by the Department of State and USCIS to determine United States citizenship by birth in the CNMI, and because the DoD CAF is adjudicating the eligibility of persons for access to national security classified information, the DOD CAF believed it more prudent not to accept a United States passport issued between January 9, 1978 and November 4, 1986, as sole proof of United States citizenship by birth in the CNMI.¹

Please note that the DoD CAF's request for additional documentation has not resulted in the denial or revocation of the security clearances of anyone born in the CNMI. In addition, since receiving your letter, my Office of General Counsel (OGC) contacted their counterparts at

¹ This is not the only occasion in which USCIS policy and State Department policy have conflicted regarding citizenship. Last year, USCIS changed its policy regarding a certain population of children born to United States citizens abroad after a conflict between its rules and the State Department's resulted in the denial of passports.

USCIS OGC's Adjudications Law Division to seek clarification on USCIS's views regarding this issue. USCIS confirmed it does not follow the *Sabangan* case directly; it uses November 4, 1986, as the demarcation date. However, it clarified it will recognize a United States passport issued to a United States citizen as conclusive evidence of citizenship pursuant to 22 U.S.C § 2705. For an individual born in the CNMI prior to November 4, 1986, who claims United States citizenship, but does not possess a valid United States passport, USCIS requires evidence that the person meets the requirements of Section 301 of the Covenant.

Therefore, going forward, the DoD CAF will follow USCIS and accept as proof of United States citizenship a valid United States passport issued to an individual born in the CNMI prior to November 4, 1986, without further documentary evidence, as long as the passport was issued to that person as a United States citizen.² If an individual born in the CNMI prior to November 4, 1986, does not have a valid United States passport, the DoD CAF will also follow USCIS in this circumstance and require evidence that the person meets the requirements of Section 301 of the Covenant.

I thank you for your continued concern and support to the Department's uniformed service members, civilian employees, and contractor personnel. If you have any questions or would like more information, please contact Mr. Jon Eskelsen, Chief of Communications and Congressional Affairs, at 202-606-5003 or jon.c.eskelsen.civ@mail.mil.

Sincerely,



Charles S. Phalen, Jr.
Acting Director

References:

- (a) Executive Order 12968, "Access to Classified Information," August 2, 1995
- (b) DoD Instruction 5200.02, "DoD Personnel Security Program (PSP)," March 21, 2014, as amended
- (c) USCIS Policy Manual, Volume 12, Part A, Chapter 2
- (d) Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. 94-241 (PDF), 90 Stat. 263, 266, March 24, 1976

² United States passports may be issued to both citizens and nationals. A United States passport denoting an individual as a United States national will not be accepted as proof of United States citizenship.